



BILLING CODE: 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584-AE21

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of the Electronic Benefit Transfer-Related Provisions of Public Law 111-296

AGENCY: Food and Nutrition Service (FNS), USDA

ACTION: Proposed rule

SUMMARY: This proposed rule would revise regulations governing the WIC Program, incorporating the provisions set forth in the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) related to Electronic Benefit Transfer (EBT) for the WIC Program. The HHFKA was signed into law by President Obama on December 13, 2010.

DATES: To be assured of consideration, comments must be postmarked on or before [insert date that is 90 days after the date of publication].

ADDRESSES: FNS invites interested persons to submit comments on this proposed rule.

Comments may be submitted by any of the following methods:

- *Mail:* Send comments to Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302, (703) 305-2746.
- *Web site:* Go to <http://www.fns.usda.gov/wic>. Follow the online instructions for submitting comments through the link at the Supplemental Food Programs Division Web site.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305-2746.

SUPPLEMENTARY INFORMATION:

I. Overview

This proposed rule would amend the WIC regulations to implement provisions related to EBT in the WIC Program included in Pub. L. 111-296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), signed into law on December 13, 2010. FNS issued policy and guidance to WIC

State agencies on the implementation of the legislative requirements addressed in this rulemaking that were effective on October 1, 2010. However, selected areas of the law are discretionary and therefore, FNS is seeking public comment on several of the requirements contained in this proposed rule.

II. Background

Providing WIC participants a specific prescription of supplemental nutritious foods based on their nutritional needs is a cornerstone of WIC's mission. Currently, the majority of WIC participants receive paper food instruments (FIs) that contain their food prescription. These FIs are then transacted at an authorized retail vendor enabling the participant to receive Program food benefits. However, issuing paper benefits is cumbersome and inefficient. Specifically, FIs present several limitations to Program stakeholders. For example, FIs restrict the number of participant shopping trips because foods contained on a FI must usually be purchased in totality. In addition, FIs do not yield data on the type, amount, and cost of foods purchased.

In line with current trends and overall public expectation of doing business and receiving services electronically, the WIC Program has been slowly transitioning the benefit issuance methodology over the past several years from paper FIs to EBT. The use of EBT in the WIC Program allows both the WIC Program and its participants to use advanced technologies in the delivery of benefits, and helps support WIC's mission to improve client services.

In 2003, the WIC Program released a strategic plan outlining its technology vision to modernize and/or replace antiquated clinic certification systems in an effort to improve client

services and to move all State agencies toward delivering WIC food benefits through the use of EBT. State agencies must evaluate the cost of these upgrades in relation to the cost of total system replacements. Replacing older systems to prepare for EBT implementation is not a requirement, but could be necessary in some State agencies if the current clinic system is outdated and is unable to support EBT functionality.

It is well recognized and accepted that EBT is by far the preferred method of benefit delivery for the WIC Program, and is supported by WIC participants, authorized vendors, and State WIC administrators. Benefits of EBT include:

1. Allowing participants to purchase the complete food package items at their convenience and with discretion during the in-store transaction.
2. Helping to ensure that participants are only able to purchase WIC authorized foods and that foods are not improperly purchased or substituted due to human error, thereby decreasing opportunity for fraud and abuse of Program benefits.
3. Providing the WIC Program with data useful to improve program management and integrity. This includes data on the type, brand and cost of each food item so State agencies can better control food costs through informed food package decisions and improved rebate billing for infant formula and other foods.
4. Enabling the vendor to complete the WIC transaction efficiently and properly in the checkout lane.
5. Substantially reducing back office accounting time and cost necessary for handling and accounting for food instruments; including allowing for the vendor to file claims and be paid more promptly.

Over the past 15 years, FNS has continued to support and promote WIC EBT through collaborative efforts with WIC State agencies, retail vendor groups, the banking industry, EBT processors, and a variety of other EBT stakeholders. With limited funding, progress has been slow but steady. The provisions in the HHFKA support this progress and address many important aspects of WIC EBT implementation. As State agencies move forward with WIC EBT, it is critical that standard business practices, policies, and requirements are followed to collaboratively expedite EBT implementation and maximize resource utilization. FNS recognizes that State agencies currently have some latitude in implementing Program requirements; however, as the Program moves toward national technical standards and systems, standardization will become increasingly important for all stakeholders to facilitate EBT implementation.

Building on the experience of current State WIC EBT projects, FNS continues to support and facilitate the expansion and transfer of those State EBT systems that are affordable. Currently, two EBT technologies are successfully in use in the WIC Program and both technologies have proven to be affordable. However, much debate continues to exist in the WIC community over EBT card technologies. The two technologies in use today are: (1) offline, smart card technology that has an embedded microchip that stores the participant's food benefit prescription information on the chip; and (2) online, magnetic stripe technology similar to a traditional debit card that accesses an online database where the participant's benefit account is maintained. As part of the planning process that State agencies must follow, they must conduct a thorough analysis assessing the technology alternatives, which includes a feasibility study and cost

analysis of implementing each technology solution, and an analysis of which technology would be the best fit given a State agency's business practices and operational requirements. As each State agency has unique requirements and resources that must be fully evaluated in order to choose the most appropriate technology platform, FNS remains technology neutral in supporting current and future WIC EBT initiatives. The provisions in this proposed rule apply to all available EBT technologies.

WIC benefits are not associated with a specific dollar amount as are benefits in other programs such as the Supplemental Nutrition Assistance Program (SNAP), but rather are provided in the form of a prescribed food package in which the participant may only purchase specific food items, package sizes, and quantities. For example, a WIC participant may be issued a food package that contains 2 dozen eggs and 3 gallons of milk for purchase. Conversely, a SNAP participant is issued a specific dollar amount to purchase any food or food products prepared for human consumption, except alcoholic beverages and tobacco, hot foods, or foods prepared for immediate consumption. Since SNAP benefits are authorized for a specific dollar amount, benefit redemption transactions at the retail point of sale (POS) are essentially a financial transaction settled in a manner similar to other electronic payment types such as debit. WIC benefits, on the other hand, are limited to the food items specified on the EBT card and the foods authorized for purchase by each WIC State agency. Due to the restrictive nature of WIC benefit issuance, a WIC EBT transaction is often considered one of the most complex transactions at the retail POS.

Given the challenges of the complex food benefit and technology needed to support those complexities, and the nationwide WIC EBT implementation requirement of October 1, 2020, the provisions in this proposed rule are critical for WIC State agencies, retailers, system developers and EBT processors to effectively implement the mandate. Establishment of these provisions will promote consistency, save resources and streamline EBT implementations, which will ultimately reduce barriers as WIC moves ahead with EBT implementation. FNS will continue to provide technical assistance to support WIC EBT expansion efforts. While these regulations and associated policies are necessary, it must be noted that dedicated and sustained funding is also critical to help WIC State agencies implement this important technological advancement that will fundamentally change and improve the delivery of WIC food benefits.

The following is a discussion of each proposed WIC EBT provision.

1. Definitions.

Electronic Benefit Transfer. Pursuant to section 17(h)(12)(A)(i) of the CNA, the term “electronic benefit transfer” means a food delivery system that provides benefits using a card or other access device approved by the Secretary that permits electronic access to WIC Program benefits. This proposed rule would amend §246.2 to add the definition of EBT.

Cash-Value Voucher/Cash-Value Benefit. Federal WIC regulations (§246.2) provide definitions for cash-value vouchers (CVV) and food instruments, and within those definitions, refer to an EBT card as a means to obtain WIC food benefits. However, as EBT cards are not technically considered vouchers in an EBT environment, the Department seeks to lessen

confusion by proposing to amend the current definition by clarifying that a cash-value voucher is also a cash-value benefit (CVB) in an EBT environment.

Participant Violation. Federal WIC regulations (§246.2) identifies the sale of WIC benefits (cash-value vouchers, food instruments, EBT cards, and/or supplemental foods) by participants as a participant violation, but does not specifically address the offer of or intent to sell WIC benefits. In addition, as technology has advanced, opportunities to sell items have expanded from print to online through various social media. Protecting the integrity of the program has always been a primary objective of the Department and State agencies. Therefore, this proposed rule would expand the definition of participant violation in §246.2 to include the offer or intent to sell WIC benefits. The revision would also make it clear that the list of participant violations that appears in the definition is not exhaustive, thus giving WIC State agencies greater ability to develop policies and procedures to address emerging issues relating to participant abuse and program integrity. This change also clarifies that any form of fraud and abuse, such as using WIC benefits in any way other than the method for which they were intended, is a violation of Program regulations. Further, consistent with §246.23(c)(1), State agencies are expected to sanction and issue claims against participants for all program violations.

2.

Statewide Implementation of EBT by October 1, 2020, and Exemptions.

Pursuant to section 17(h)(12)(B) of the CNA, each State agency must implement an EBT system throughout the State by October 1, 2020, unless the Secretary grants a temporary

exemption. The law also requires State agencies be responsible for the coordination and implementation of their WIC EBT system. This proposed rule outlines these requirements. It would amend §246.12(a) to add the statewide implementation requirement of EBT by October 1, 2020, and provide information on allowable exemption criteria at §246.12(w)(2).

Federal WIC regulations (§246.12(b)) currently allow WIC State agencies to implement any of the three types of food delivery systems – retail, home delivery, or direct distribution. The HHFKA defined EBT as a “food delivery system.” Therefore, this proposed rule would add EBT as a fourth type of food delivery system that a State agency may operate under its jurisdiction. At this writing, the Department acknowledges that EBT is merely an electronic means by which the food benefits are accessed in a retail delivery system, rather than as a separate food delivery system as stated by law. Nonetheless, the Department is cognizant that further technological advances may allow the use of EBT as a means by which the food benefits are accessed in other types of food delivery systems. To address the significant differences in an EBT food delivery system versus the other food delivery systems currently defined in the regulations, and to provide clarity on the requirements specific to the EBT food delivery system, this proposed rule would add paragraphs §246.12(w) through (cc). Other requirements for retail operations that are more general in nature that are still applicable in any EBT retail environment (paragraphs §246.12(g) through (l)) would remain unchanged and would be cross-referenced in the proposed rule in §246.12 (z)(1).

Section 17(h)(12)(C) of the CNA authorizes the Secretary to grant temporary exemptions to the statewide EBT requirement if the State agency can demonstrate one or more of the following:

(1) there are unusual technological barriers to implementation; (2) operational costs are not affordable within the nutrition services and administration (NSA) grant of the State agency; or (3) it is in the best interest of the WIC Program. Any State agency that requests a temporary exemption must specify a date by which it anticipates statewide implementation. Further clarification and discussion of the process to determine if an exemption is warranted follows.

Currently FNS requires each State agency to complete a cost analysis and feasibility study as part of their planning efforts prior to expending resources (both staffing and funding) on EBT. The following components must be assessed: WIC management information system capability; WIC business capacity; retailer technical capabilities; retailer equipage; financial considerations; infrastructure considerations; and electronic card options. A State agency's planning efforts will usually result in a 2-5 year plan for the State to implement WIC EBT. To ensure progress is made towards the goal of nationwide EBT implementation by October 1, 2020, §246.12(y)(3) of this proposed rule would require each State agency to have an active WIC EBT project by October 1, 2015. An active EBT project is defined as a formal process of planning, design, pilot testing, or statewide implementation of WIC EBT. If, at the time of this publication, a State agency does not have an active EBT project, the State agency would be required to submit for FNS review and approval a Planning Advance Planning Document (PAPD) prior to October 1, 2015, to ensure FNS has at least 60 days for review, as required by FNS Handbook 901. The development and implementation of EBT in the WIC Program is a complex process and requires dedicated staff and resources. The magnitude of carrying out a WIC EBT project should not be underestimated and, therefore, it is vital that State agencies begin planning for EBT at least five years prior to the mandated statewide EBT implementation date of this proposed rule.

As each State agency conducts their EBT planning activities and chooses which EBT technology is most feasible to implement in their individual State, they must also examine any unusual technological barriers that could jeopardize or interfere with their ability to implement WIC EBT. The Department is aware that some State agencies may not have the infrastructure necessary to implement EBT by the October 1, 2020, implementation deadline requirement. Section 246.12(w)(2)(i) of the proposed regulation would allow for an exemption to implement EBT should the State agency encounter technological barriers that would prevent implementation. Nonetheless, the Department recognizes that identified barriers may be reduced over time due to technological advances and therefore would require, as part of the State agency's annual update, a periodic reassessment of these barriers to implementation.

As noted, all WIC State agencies must conduct a cost analysis during their EBT planning process in order to ensure EBT operational costs after implementation are affordable within their NSA grant. At this writing, all WIC State agencies that have implemented EBT statewide have determined that EBT is affordable using their individual NSA grants, but the Department recognizes this may not be the case for all State agencies in the future. Therefore, §246.12(w)(2)(ii) of the proposed regulation would allow for an exemption to EBT implementation should EBT be determined, after a thorough cost analysis, to be unaffordable within a State agency's NSA grant. WIC does not have the requirement that EBT be cost neutral to its paper food instrument costs.

Although EBT implementation by October 1, 2020 is mandated by law, the Department remains cognizant of the impact of EBT systems on State agencies, vendors, and WIC participants. There may be unusual circumstances within the State agency which may indicate EBT would not improve benefit delivery or would negatively affect WIC participants. The Department proposes at §246.12(w)(2)(iii) that an exemption to implement EBT be allowed if a State agency determines that such an exemption would be in the best interest of the WIC Program.

FNS supports the vision of improving the integrity and operational efficiency of the Program through nationwide EBT implementation, while acknowledging the exemptions allowed by the HHFKA. Section 246.12(w)(3) proposes any such approved exemption not exceed three years, as FNS believes this is a reasonable timeframe for a State agency's situation to change relative to the ability to implement EBT. Further, if exemptions are granted, it will not relieve a WIC State agency of the annual EBT status reporting requirement, as proposed in §246.4(a), as the State agency must still demonstrate its progress toward EBT statewide implementation.

3. EBT Status Reporting.

Pursuant to Section 17(h)(12)(D) of the CNA, each WIC State agency must submit to FNS an EBT project status report to demonstrate the progress of the State agency toward statewide implementation. The HHFKA requires that if the State agency plans to incorporate additional programs in the WIC EBT system of the State, it must consult with the State agency officials

responsible for administering those additional programs prior to submitting the WIC EBT planning documents to FNS for approval.

Each WIC State agency submitted an initial EBT implementation plan to FNS in April 2011, outlining when it would implement an EBT system, with October 1, 2020, being the latest date permitted for implementation. This proposed rule at §§246.4(a) and 246.12(y)(4) would require that an annual update of the State agency's goals and objectives regarding EBT implementation be submitted as part of the State agency's State Plan of Operations. The annual update would document the State agency's progress toward accomplishing EBT implementation by the mandated deadline. Information submitted would include, but not be limited to, information on changes to the implementation plan that alters the implementation date, project scope or description, risks to the project, challenges or barriers anticipated or encountered, projected and actual costs, and actions taken to mitigate project risks. As proposed in §246.12(y)(4)(i), State agencies that have been approved by FNS through the Advance Planning Document (APD) process to conduct EBT planning or EBT implementation activities, but are not yet implemented statewide, would be exempt from the annual update requirement, as this information would already be contained in the APD. State agencies that have already implemented EBT statewide would be required, as proposed in §246.12(y)(4)(ii), to annually address any updated information for future EBT activities, plans for system updates, re-procurements, or other major activities impacting its EBT system.

The Department recognizes the significant time and effort currently put forth by State agencies in gathering information and submitting reports as requested or required by FNS. As

such, the Department proposes that the required EBT status reports be incorporated into the State agency's annual State Plan of Operations submission in an effort to reduce burden and potential duplicative reporting efforts. The Department also recognizes that while it may be difficult for some State agencies to predict accurate implementation dates, a thorough effort must be made regarding the annual status reports so that FNS can ascertain, with some level of assurance, that State agencies are on track to meet the goal of statewide EBT implementation by October 1, 2020. EBT status report submissions are essential and imperative to the Department as a means for planning the budget, staffing, and other resources that may be required to facilitate successful nationwide EBT implementation.

4. EBT Cost Impositions on Vendors.

Current WIC regulations at §246.12(g)(5) restrict State agencies from imposing costs for equipment, systems, or processing required for EBT on any retail store authorized to transact food instruments, as a condition for authorization or participation in the WIC Program. The State agency may, however, allow retail vendors to contribute to such costs on a voluntary basis, as a number of retailers have already done. Since WIC EBT has demonstrated improved vendor operations and efficiency, retailers may make a business decision to share the costs of WIC EBT during EBT implementation.

Section 17(h)(12)(E)(i) of the CNA retains the present prohibition of cost impositions on retail stores of EBT equipment and systems. However, as amended, the prohibition of cost impositions exclusively applies to retail stores using equipment solely for program support. Moreover, the prohibition of imposing costs on retail vendors is eliminated at Section

17(h)(12)(E)(iv) of the CNA for those State agencies which have completed statewide expansion of WIC EBT. Therefore, State agencies that have implemented EBT statewide would require a retail vendor applying for authorization to become a WIC vendor to demonstrate the capability to accept WIC EBT benefits prior to authorization by the State agency, unless the State agency determines the vendor is necessary for participant access.

Further, the new provision provides State agencies that have implemented EBT statewide, discretion as to whether it will incur the cost of ongoing maintenance of EBT multi-function systems and equipment. FNS proposes at §246.12(aa)(4) to disallow all costs for maintenance fees, including the maintenance costs for stand-beside WIC-only equipment, for those State agencies that have implemented EBT statewide. FNS considers this a necessary step for the viability and affordability of WIC EBT in the future.

Statewide Implementation Cost Impositions. Prior to the HHFKA, WIC EBT State agencies could not impose any EBT costs on its authorized retail vendors, even if EBT was implemented statewide. To date, several WIC State agencies have supplemented the vendor's cost to purchase WIC EBT capable commercial equipment and software that has been certified by the State agency. The certified cash register system cost has typically included up to three years of maintenance costs. Ongoing maintenance costs are typically charged by the system provider as a monthly fee to ensure that the software and hardware are fully-functional and updated. The HHFKA specifies that State agencies may not be required to pay maintenance costs for multi-function equipment once the WIC EBT system is implemented statewide.

This proposed rule would preclude a statewide EBT State agency from incurring maintenance costs essential to, and directly attributable to, an EBT system whether the equipment is multi-functional or used solely for the WIC Program; all such costs would be considered unallowable costs. Disallowing these costs supports the promotion of the use of multi-function equipment which streamlines the transaction for both the participant and vendor; prevents the unintentional incentive to retail vendors to use fully-funded government equipment solely used to support the program; eliminates the risk of State agencies being obligated to fund maintenance costs of equipment purchased by the retail vendor at its time of application in order to meet the requirement to demonstrate its capability to accept EBT benefits; and reduces the risk of State agencies requesting exemptions from the October 1, 2020 EBT implementation mandate on the basis of determining maintenance costs are not affordable.

To ensure that WIC EBT implementation builds on the prior initiatives and successes of EBT implementation in SNAP and other federal-state administered assistance programs, FNS seeks to accelerate the ongoing improvement efforts of the electronic delivery of benefits and promote leveraging existing commercial infrastructure in retail vendors and integrating EBT into a single multi-function system. This solution provides EBT transaction capability in all lanes; supports all current forms of SNAP, the Temporary Assistance for Needy Families program (TANF), Social Security, and other cash benefit programs; and does not require a specialized, government-supplied EBT terminal. The multi-function solution only requires a single scan to verify the participant's eligibility and register the item purchase at the POS terminal. In addition, participants have the added convenience and positive shopping experience by no longer having to separate the WIC-eligible food items from the non-WIC item, allowing them to complete their

purchase faster and essentially in the same manner as any other customer in the store. Integrated systems are also beneficial to the store because it reduces cashier training time, errors and misuse, and reduces time in-lane. Relying on stand-beside WIC-only EBT equipment requires a double scan, which requires each WIC item to be scanned first to verify the participant benefits and then a second scan to register the item purchase at the POS terminal.

Criteria for Cost Sharing. Section 17(h)(12)(E)(ii) of the CNA requires that the Secretary establish cost sharing criteria to be used by WIC State agencies and retail vendors as it applies to equipment or systems that are not solely dedicated to transacting EBT for the WIC Program. This provision would apply to not only EBT equipment, but to system software necessary to complete WIC EBT transactions. To date, the Department has approved various cost sharing strategies used by State agencies implementing WIC EBT systems to fund acquisitions of commercial cash register systems, each with separate strategies and formulas that were appropriate to their particular situation. The current practice for funding commercial WIC functionality has been to encourage and negotiate cost sharing for EBT equipment and systems with vendors as much as possible, as WIC EBT is mutually beneficial to both vendors and the State WIC Program. When this proves unfeasible, and/or Federal WIC funding has been available and it has been in the best interest of the WIC Program, FNS has typically funded WIC costs of retailer systems and equipment in totality. Where possible, funding was provided to retail vendors that operated in more than one State that would therefore have a regional or national benefit. In these cases, it is assumed that once a retail vendor has programmed its system for WIC EBT, that system can be used in another State without further costs incurred; i.e., pay once but use multiple times. This approach is congruent with current regulations and

Section 17(h)(12)(E)(i) of the HHFKA that prohibits imposing costs of EBT to retail vendors during EBT implementation.

As noted, the HHFKA requires the establishment of criteria for cost-sharing by State agencies and vendors of costs associated with any equipment or system not solely dedicated to transacting EBT for the WIC Program. These costs include, but are not limited to: phone lines, internet connection, hardware, software updates associated with the equipment, and processing fees. Shared costs must be allocated, or fairly distributed, among all benefiting parties. As such, proposed §246.12(aa)(2) would require State agencies use the Federal cost principles set out at 2 CFR Part 225 (Cost Principles for State, Local, and Indian Tribal Governments) in allocating costs. The criteria would not only apply to shared purchased costs, but also applicable shared credits and recoveries. Compliance with these principles provides reasonable assurance that the Federal Government and the State agency bear their respective fair shares of costs incurred by the State agency to administer Federal assistance programs. When a cost benefits multiple programs or entities, each party's fair share is a portion commensurate with the benefit the program received from the State agency having incurred the cost. Determining fair share requires an objective methodology, documented and consistently applied, for allocating costs to benefiting parties. The State agency's allocation methodology would have to generate a reasonable measurement of the benefit each party receives from shared costs.

To date, FNS has remained flexible in defining cost sharing criteria and has found that what may work for one State agency may not work as well with another State. Regardless of the approach, however, each State agency's initiatives in this area would need to be fairly employed

across their retailer base. The cost sharing criteria established for equipment and other associated costs that are not solely dedicated to transacting EBT for the WIC Program will follow the Federal guidance established for cost allocation principles as set forth in 2 CFR Part 225. To provide reasonable assurance that these principles are being followed and that the approach is applied fairly to all retail vendors, the State agency must furnish its allocation and/or cost sharing methodology to FNS for review and approval before incurring costs.

Processing Fees. In general, the term “processing fee” refers to an elective charge to compensate for additional consumer services. In the WIC EBT environment, processing fees are incurred by a WIC authorized vendor from an outside service provider (called an acquirer or third party processor) who electronically “processes” each card purchase from the vendor to the appropriate bank or EBT processor. It is common for processing fees to be a negotiated flat fee of a range between \$0.02 and \$0.10 per transaction (or more) depending on the volume of transactions.

As provided in Section 17(h)(12)(E)(iii)(I) of the CNA, authorized WIC retail vendors would be required to pay commercial processing costs and fees if equipment is utilized for WIC and other transactions. A retail vendor that elects to accept EBT using multi-function equipment would pay commercial transaction processing costs and fees imposed by a third-party processor that the retail vendor elects to use to connect to the State’s EBT system. While the Department understands that processing fees are not customarily charged to retail vendors who accept WIC EBT equipment from a State agency or its contracted EBT provider if the equipment is used solely for the WIC Program, this proposed rule would permit such fees after statewide

implementation. This is consistent with our proposal prohibiting the cost of maintenance fees in order to encourage the adoption of multi-function equipment. The processing fees may be per transaction fees charged in lieu of ongoing maintenance fees or in some combination consistent with industry practice for commercial multi-function equipment. Processing fees would not be charged to retail vendors after statewide implementation who are needed for participant access and who accept WIC EBT equipment from a State agency or its contracted EBT provider used solely for the WIC Program. Section 246.12(aa)(3)(i) and section 246.12(aa)(4) of this rule address processing fees.

Interchange Fees. The CNA at Section 17(h)(12)(E)(iii)(II) prohibits interchange fees on WIC EBT transactions. Section 246.12(aa)(3)(ii) of this proposed rule reflects this prohibition. An interchange fee is the term used in the payment card industry to describe a fee paid between banks for the acceptance of card based transactions. Interchange fees are currently paid for credit and debit card transactions in the commercial environment, but not for WIC or SNAP EBT transactions. Interchange fees are paid by retailers to card issuers (the banks that sponsor the credit or debit cards). The rates are set by the card association, such as MasterCard or VISA, and are based on a combination of factors including the transaction amount, total volume, and type of business. Issuers then pay fees to the card associations.

Capability to Accept EBT Benefits. In accordance with section 17(h)(12)(E) of the CNA, proposed regulations at §246.12(aa)(4)(ii) state that once a State agency has implemented EBT statewide, the State agency would require any prospective retail grocer seeking to become a WIC authorized vendor to demonstrate the capability to accept an EBT benefit prior to authorization.

In essence, the applying retail vendor would be required to be “EBT ready” at the time they apply, and there would be no obligation for the State agency to provide funds to cover EBT costs in order for the retail vendor to participate in the Program. As previously mentioned, maintenance costs of EBT systems and equipment after EBT statewide implementation would be considered unallowable, thereby precluding the State agency from incurring these costs. However, a State agency may elect to fund any expense, with USDA approval, of an applicant retail vendor’s costs to obtain an EBT capable cash register system in the event there is a need to ensure WIC participant access to their food benefits.

As WIC State agencies implement EBT, each WIC retail vendor chooses to either build WIC EBT functionality into their existing electronic cash register (ECR) and commercial POS system, or purchase a separate system, or stand-beside EBT equipment, in order to have the capability to accept EBT benefits. As these systems are developed, State agencies have the responsibility to ensure they maintain the integrity of the WIC Program benefit delivery system and that Program participants have access to their benefits. State agencies currently use an extensive review, testing and certification process to help ensure WIC retail vendor’s EBT systems comply with WIC EBT development guidance and WIC Program requirements. As the current retailer certification process has been found to be quite cumbersome, FNS and State agencies are currently seeking ways to improve this process while still ensuring benefits are accurately deducted from WIC participant EBT cards or accounts.

FNS plans to establish procedures and guidance in the Operating Rules for the certification of retail vendor electronic cash registers and associated payment devices, to include the

development of common test scripts and testing criteria. FNS is especially interested in reader comment on the proposed certification requirements that would be used to determine retail systems as “EBT capable” once a State agency has implemented EBT statewide. Further discussion on certification requirements follows in the Technical Standards section of this rulemaking.

5. Minimum Lane Coverage Guidelines.

Section 17(h)(12)(F) of the CNA requires that the Department establish a minimum standard for installing WIC EBT equipment, or terminals, in vendor locations. This proposed rule at §246.12(z)(2) provides a national WIC EBT vendor equipment coverage formula that would be consistent from state-to-state and establishes a minimum level of equipage for POS terminals used to support the WIC Program. This is consistent with the legislative requirement to establish national standards for implementation of WIC EBT systems, including standards for lane coverage for terminals to accept WIC EBT transactions. These minimum standards apply to all systems and equipment used to support WIC EBT, whether the equipment is multi-functional or used solely for the WIC program.

The proposed regulations at §246.12(z)(2)(i)-(ii) requires an EBT equipment installation formula similar to the SNAP equipment installation requirements. Installation of one terminal for every \$11,000 in monthly WIC sales would be required for superstores and supermarkets, and installation of one terminal for every \$8,000 in monthly WIC sales would be required for all other vendors. Given the variety of farmers and farmers markets, and the variety of electronic solutions available that permit a device to be shared by several farmers, State agencies would be

permitted to determine the equipment to be installed to support farmers or farmers markets authorized to accept a cash value benefit. POS devices would be installed up to a maximum of four lanes but not more than the number of lanes in a store location. This formula, contrary to SNAP regulations, does not require all lanes to be equipped for stores earning 15 percent or more of their food sales in WIC business; the HHFKA does not require such a threshold as is required in the Food and Nutrition Act of 2008 (P.L. 111-296). Additionally, the percentage threshold for all lanes is not necessary because most WIC-only stand-beside POS devices will be needed in locations that have fewer than three lanes. State agencies would have authority under this proposed regulation to allow for alternative installation formulas, upon FNS approval.

Because electronic payments are already prevalent in many independent grocer and supermarket lanes today, the need to install separate WIC EBT terminals should primarily apply to smaller WIC grocers rather than multi-State supermarkets that will, in most cases, use their own electronic cash registers. FNS fully expects that most situations requiring a State agency or its contractor to install WIC-only stand-beside equipment will involve smaller vendors who: (1) may not be able to afford the cost to add WIC capability to their existing cash register system; or (2) may not have an electronic cash register at all. FNS also anticipates that some multi-lane retail vendors will be equipped temporarily with WIC-only stand-beside equipment during statewide EBT expansion because some may be unable to integrate WIC EBT into their cash register systems within the State agency's implementation schedule. In these instances, the lane coverage installation formula will ensure a basic level of service to WIC participants.

In order to develop a WIC EBT lane coverage installation formula, FNS considered the current minimum lane coverage formula required by the SNAP EBT regulations. This formula establishes a threshold for food retailers (hereafter referred to as retail vendors) based on their level of SNAP business each month. The SNAP installation formula specifies that retail vendors redeeming 15 percent or more of their total food sales in SNAP benefits must have all lanes equipped. For stores below the 15 percent threshold, SNAP retailers classified as superstores and supermarkets receive one EBT terminal for every \$11,000 in monthly SNAP sales. All other SNAP retailer types receive one EBT terminal for every \$8,000 in monthly SNAP sales.

The two goals of the lane coverage installation formula for SNAP were to: (1) ensure adequate access for SNAP recipients; and (2) ensure that the SNAP EBT shopping did not adversely affect time required to complete EBT purchases in the checkout lane. Actual experience has generally shown the larger supermarkets and independent stores with three or more checkout lanes utilizing their own integrated cash register equipment rather than installing separate EBT equipment under the installation formula required by SNAP regulations. This was largely the result of the adoption of electronic payment systems adopted by the grocery industry that began in the late 1980's and continued throughout the 1990's. Consequently, the vast majority of SNAP EBT-only terminals deployed by State agencies have been installed in smaller retail vendor locations with less than three lanes.

Over the years, WIC State agencies have used a variety of lane coverage installation formulas. A variant of the SNAP installation formula was used by the Texas and New Mexico WIC State agencies, both utilizing the smart card technology solution, in devising their WIC

EBT equipment reimbursement formula. Both Texas and New Mexico provided funding to allow the WIC vendors to purchase their own certified commercial cash registers with WIC EBT functionality. The reimbursement formula, in essence, determined a minimum lane coverage installation formula. This reimbursement formula mirrors the SNAP EBT formula by classifying supermarket retail vendors (those with annual gross food sales of \$1 million or higher) and non-supermarket retail vendors (those with annual gross food sales below \$1 million). The Texas and New Mexico WIC State agencies also included a formula to specifically address the above fifty percent vendors, as defined at §246.2 of WIC regulations, since their gross food sales reflect a higher percentage of WIC food purchases, and therefore, must be considered separately for lane coverage determinations. Lastly, these two State agencies allowed for one lane to be reimbursed for any newly authorized WIC vendor with no prior sales history available.

Additional WIC EBT State agencies each established their own lane coverage installation formulas as well, but based their formulas on either the transaction activity for paper vouchers or the availability of funding. For example, the Michigan State agency provided devices based on the following annual WIC redemption criteria: one device for redemption below \$70,000; two devices for redemption between \$70,000 and \$200,000; three devices for redemption between \$200,000 and \$300,000; and four devices for redemption above \$300,000. In some instances, the State agency also installed devices that were capable of providing access to WIC benefits, SNAP benefits, and cash EBT. The Kentucky WIC State agency took a similar approach equipping vendors with one device with up to \$22,000 in annual WIC sales, and an additional device for every \$11,000 in additional WIC sales; not to exceed a total of four devices. The Chickasaw Nation WIC State agency adopted a similar formula, but used lower thresholds in

increments of \$5,850 for up to four lanes. Conversely, funding constraints had to be taken in consideration for the Nevada WIC State agency, which provided equipment for two lanes per each authorized WIC vendor location, regardless of annual WIC redemption volume. The Wyoming WIC State agency also established a reimbursement formula based upon the availability of funding at the time.

Given the WIC EBT State agencies' lane coverage experiences to date, FNS believes the SNAP equipment formula represents a reasonable and consistent basis to allow WIC participants to purchase their WIC foods in the same manner as all other non-program customers. Therefore, FNS is proposing a similar lane coverage formula as the SNAP installation formula. This proposed solution will also help better align equipment in stores and streamline the number of devices installed if a store location is authorized for both the WIC and SNAP programs.

FNS proposes at §246.12(z)(2) that during initial EBT implementation, State agencies be required to equip no more than four lanes with WIC EBT terminals at no cost to the WIC vendor in accordance with the guidelines noted above. (Vendors can agree to incur some of these costs voluntarily). State agencies would not be required to provide more devices than the number of lanes in the location. For example, if a vendor qualifies for three lanes based upon their level of WIC redemptions, but only has two checkout lanes, only two devices will be provided by the State agency. However, a State agency may elect to provide an additional device to be used at the customer service counter, or nearby, in order to allow WIC participants to obtain their current WIC food balance without being limited to only obtaining the information in a checkout lane. Newly authorized vendors would be provided one device initially unless the State agency is

aware of prior WIC redemption levels in that location that would justify additional terminals to ensure adequate participant shopping access.

Once a State agency has implemented WIC EBT statewide, the State would continue to provide a single terminal for newly authorized vendors the State agency has determined are necessary for WIC participant shopping access. However, if participant access is not an issue, the State agency would require vendors applying for WIC authorization to obtain their own WIC EBT capable register system in order to accept WIC benefits. Please refer to the section related to imposition of costs on WIC vendors for further information on this issue.

In some instances, WIC State agencies have worked with their SNAP agencies to acquire WIC and SNAP EBT services through a single contract, which would permit a single POS terminal device to be installed in authorized vendor locations that accept both WIC and SNAP benefits. The Michigan and Nevada WIC State agencies have done this, although through different processes. FNS takes no position relative to the advantages or disadvantages of such an approach. It is also very likely a WIC State agency will encounter retail vendor locations with a SNAP EBT-only device. We encourage State agencies to work with their SNAP counterparts to avoid situations where installation of two government devices in the same retail vendor check-out lane is necessary. Where there is a common contractor providing EBT services for both WIC and SNAP EBT to the State, it has been customary to replace the SNAP EBT-only device with a combination device capable of accepting both WIC and SNAP benefits. FNS would be interested in comments from State agencies and industry on ways a single device may be utilized when there is not a common contractor shared between the WIC and SNAP agencies. If the WIC

State agency has determined that a joint WIC and SNAP/Cash EBT terminal is necessary, an alternate lane coverage formula may be proposed for FNS approval that takes into account use of the same terminal device for access by WIC, SNAP and any cash benefit Program participants. The appropriate allocation of the costs for these shared devices must be included in the Implementation Advance Planning Documents provided for FNS approval.

6. Technical Standards and Operating Rules.

Background. FNS has long recognized that standards and common business rules are needed for successful WIC EBT implementation. In the early smart card WIC EBT implementations, common file formats were defined so vendors could easily accept the electronic lists of approved WIC foods from multiple State agencies. Vendors and State agencies also identified the need to use standard file formats for the daily payment claim and hot card files exchanged in the smart card EBT systems and Approved Product List (APL) files that all EBT systems exchange with vendors. Similarly, in the online WIC EBT environment, efforts were made to add WIC components to the standard online messages used to approve each purchase. The American National Standard Institute (ANSI) developed the X9.93 standards for WIC systems as a result of these needs. X9.93 standards addressed message standards for online WIC EBT and file formats for both online and smart card WIC EBT.

Early implementers of WIC EBT were required to comply with the ANSI standard but had some flexibility in their implementations to do what was best for them in order to successfully implement their projects. In the smart card/offline environment, Texas and New Mexico WIC Programs agreed to implement the technical standards, although Texas implemented a more

complex settlement server solution compared to New Mexico, which resulted in some differences in file handling. Similarly, in the online EBT environment the X9.93 standard allowed for two different purchase processes which resulted in differences between the Michigan and Kentucky WIC EBT online systems compared to the Nevada WIC EBT online system. After some discussions, it was determined that the online approach taken by Michigan and Kentucky would prevail for purchases involving integrated vendors in their online environment.

Efforts are now underway to further refine and expand technical standards and operating rules applicable to WIC EBT. The goal of these efforts is to have rules and standards that will promote a single smart card implementation process and a single online implementation process that results in faster and less costly EBT adoption by State agencies and other stakeholders. As additional State agencies implement WIC EBT, they will be able to take advantage of the integrated retail cash register systems and other components of the payments system that comply with the common specifications. Other standards related to EBT are also being developed, such as Management Information System (MIS) to EBT system interface specifications and standard retailer certification processes, which will further simplify and streamline future EBT implementations for WIC State agencies, allowing them to capitalize and benefit from earlier implementation efforts.

Operating Rules and Technical Implementation Guide (TIG) Development. Section 17(h)(12)(G) (ii) of the CNA requires that State agencies, contractors and authorized WIC vendors participating in the Program demonstrate compliance with established technical standards and operating rules. Failure to comply with the Operating Rules would result in

actions consistent with violations outlined in the vendor agreement found at section 246.12(h)(3) that apply to authorized retail vendors. Two of the most comprehensive compilations of standards and rules established for WIC EBT are the EBT Operating Rules and the TIG. The Operating Rules spell out the basic business rules for each function in an EBT system so that implementations will be consistent among each of the stakeholders participating in the WIC EBT payment network. The TIG, which is based on the ANSI X9.93 standard, supplements the Operating Rules with more specific technical information and guidance on what food vendors must do to support WIC EBT.

Given that technology is continually advancing, it is recognized that these standards and rules may not contain all necessary standards and rules that may be identified as we continue to expand WIC EBT, and that current and future standards will evolve over time. Therefore, the proposed rule at §246.12(bb)(1)(i), which addresses the Operating Rules and technical standards, is written broadly and allows for updating in the future as technology advances.

As noted, FNS feels strongly that in order to implement WIC EBT nationwide, a common set of technical standards and operating rules must be followed to facilitate EBT expansion efficiently and consistently from state to state. To respond to this need, the EBT Operating Rules and TIG were created that address, respectively, the “what” and “how” of EBT implementations. FNS, State agencies, and industry stakeholders collaboratively developed the EBT Operating Rules and TIG to help guide State agencies and industry in implementing WIC EBT systems. This collaborative effort has enabled the Operating Rules and TIG to be accepted and implemented among EBT State agencies, their authorized vendors, processors and other

stakeholders. The Operating Rules establish national practices consistent with FNS and state policies that affect the WIC EBT payment process, and follow the card payment models in use by the credit, debit and EBT SNAP/Cash payment networks.

The Operating Rules and TIG impact retailers, acquirers, third party processors and EBT host systems (state or contractor). For vendors and their cash register software, a national set of Operating Rules enables them to update their cash registers to handle WIC purchases, discounts, receipts, security and exception handling in all states where they conduct business. Acquirers, the companies that provide software, hardware and other payment services to authorized WIC vendors, will also be able to update their systems once and provide service to the many vendors they conduct business with. A single set of Operating Rules facilitates EBT implementation by allowing authorized vendors and their acquirers to provide service in multiple State agencies using one set of “business rules,” thus saving significant time and money to support WIC EBT. These Operating Rules and technical guidelines make WIC EBT cost effective for vendors to support their integrated cash register systems.

Third party processors, the companies that move electronic transactions to card issuers (EBT hosts for WIC) for payment and provide reimbursement to their WIC authorized vendors for all purchases approved electronically, use the Operating Rules to standardize processing and to establish common liability provisions in the multiple contracts they enter into with authorized WIC retail vendors and others in the payment process. For EBT host providers, either an EBT processor or a State agency, the Operating Rules and TIG permit consistent processing of all transactions among State agencies. The TIG requirements are crucial to host EBT providers

because they define how the technical data in each purchase must be included in an online WIC EBT purchase message response that must be received and processed by a retail vendor cash register system. For a smart card system, the purchase details identified in the TIG are written to a claim file that is later sent to the State agency for payment.

The present Operating Rules are divided into several sections that outline requirements for acquirers, WIC vendors, issuers (states) and card holders (WIC participants). The TIG provides technical guidance on the use of the ANSI X9.93 messages and files to ensure consistency in WIC State agency EBT implementations. There are also sections that discuss the card requirements such as the location of the magnetic stripe or smart card chip, the card numbering system and applicable technical standards. Because WIC EBT requires the exchange of unique files with authorized vendors that are not necessary for other payment tender types, the business rules are defined for the various files that are exchanged daily with authorized WIC vendors. For example, an Authorized Product List (APL) file is one of the files that are exchanged with vendors daily. The APL file contains all of the Universal Product Codes (UPC) and Price Look-Up (PLU) codes approved for use within a State agency. UPCs are 12 digit numbers embedded in a bar code printed on a product label that can be read by scanners in a checkout register. PLUs are 4 or 5 digit numbers associated with specific fruits or vegetables (e.g. bananas have a PLU of 4011). The APL file is stored at the electronic cash register to allow the WIC retail vendor to identify food items scanned at the checkout counter as WIC or non-WIC items. The APL file section in the TIG specifies the technical information on the file structure and specific data elements in each State agency's APL file. To illustrate the need for flexibility to allow for updates and changes, a future change request might allow for a farmers market application on a

smart phone to use an abbreviated APL file and provide a balance receipt that contains only the CVB balance rather than all food balances associated with the participant's EBT card.

As a second example, the Operating Rules define business rules for payment/reimbursement to vendors. Current WIC regulations require WIC State agencies to pay vendors within 60 days after valid paper food instruments have been submitted for redemption by vendors. Although 60 days is a realistic and necessary timeframe in the paper environment, established industry standards in the EBT environment require the exchange for payment in a much shorter timeframe. All stakeholders concurred through collaborative efforts in defining the Operating Rules that State agencies should pay vendors, farmers and home food delivery contractors within two days of submitting a valid electronic claim for payment to mirror industry standards. To allow for the greatest flexibility in this area, §246.12(z)(3) proposes to require payments be made to vendors, farmers and home food delivery contractors in accordance with established rules and technical requirements. This broad language will also allow for future electronic benefit delivery systems beyond the retail vendor environment.

The Operating Rules and TIG also include specific requirements and technical information on CVB transactions, to include split tender. Split tender is defined as purchasing a single WIC food item with two or more tender types. For example, when WIC participants purchase fruits and vegetables using their CVB, they are allowed to pay from their own funds using other tender types (e.g. SNAP benefits, credit card or cash) if the CVB balance is insufficient. This type of transaction at the register can become quite complex and the retail vendor must ensure the correct purchase information is correctly applied to each tender type. Electronic cash registers

can support a split tender purchase but functionality to support this for smart cards is limited at the present time. The WIC EBT Operating Rules address what is allowed for split tender and the TIG provides additional technical guidance.

The Operating Rules and TIG also specify what data is required for the purchase receipt. This is important because WIC benefit prescriptions are time-limited; they are available for a 30 day period and then expire. Purchase receipts contain the date when the electronic benefit will expire so the WIC shopper will know how much time they have to purchase the remaining foods on their electronic benefit. These types of standards are very important to retail vendors and their system developers because they are able to program their software to the TIG requirements once for use in any State agency where they are authorized, thereby eliminating the need for separate software development for each State agency WIC EBT implementation .

WIC vendor requirements are also defined in the Operating Rules and TIG. For example, a participant's EBT card must be presented at the time of sale to be accepted by the WIC authorized vendor as a fraud prevention requirement. The Operating Rules also require the vendor to support a manually key-entered card number if a magnetic stripe EBT card is presented for payment to the checkout clerk. This key-entry capability is a back-up procedure that enables the purchase to occur if the card is damaged or unreadable for some reason. Currently, a key-entered card number will not work for smart cards because the card chip must be physically in contact with the card reader in order to read the card balance before the rest of the purchase can be completed. Should contactless smart cards become prevalent in the United States payment systems, the Operating Rules and TIG may need to be amended. Future updates

to the Operating Rules and/or TIG may include details on standard messages that must be sent between a retail system card reader and a smart card. FNS expects that this will be necessary to ensure that new card and card reader technologies remain compatible with WIC requirements. Technical security requirements may also be addressed in future standardization efforts.

After thorough examination, FNS has determined that because the WIC EBT Operating Rules and TIG will be evolving documents, the actual contents of these documents will not be promulgated. Rather, FNS believes that to ensure the Operating Rules and TIG remain viable, current, and accurate, we must remain flexible in our ability to address changes and updates as they are needed. As such, the Operating Rules and TIG will be maintained in a manner similar to how the Quest EBT Operating Rules are maintained in the SNAP EBT environment. Unlike SNAP EBT, however, FNS has taken on the WIC EBT document maintenance responsibility, at least initially, because some State agencies expressed concern that they would have insufficient input into the Operating Rules and TIG if they are maintained by an industry organization.

The authority to maintain and update these standards and rules outside of the regulations is granted under §246.3(b) of current WIC Program regulations, which state that State agencies must administer the Program in accordance with the requirements set forth in FNS guidelines and instructions. Therefore, FNS has the authority to require State agencies to comply with program guidelines such as these Operating Rules, the TIG and other standards established for the implementation of EBT. As a result, FNS will maintain them as required guidance rather than include them in current regulations.

FNS intends to treat the Operating Rules and TIG as required guidance that will be, at a minimum, updated annually. FNS has established a maintenance process that allows all stakeholders the opportunity to submit change requests necessary to clarify, change or add to the rules that are prompted by implementation activity. This process, consistent with how credit and debit network operating rules are updated, permits stakeholders to submit a change request to FNS for consideration. Once received, reviewed and analyzed for potential impact, the change request will be published on a website for comment. Additionally, an opportunity to discuss the proposed changes will be provided and a final version of the change request will be published for a minimum 30 day time period. Once this comment period is completed, a schedule for implementation will be identified in the final change request. Updates will be issued as technical bulletins and then incorporated into the annual update for each document. As some change requests may require more extensive upgrades, the schedule for implementation will vary accordingly. A copy of the Operating Rules and Technical Implementation Guide is available on the FNS web site at: <http://www.fns.usda.gov/wic/EBT/operatingrules-implemguide.htm>.

Retail Vendor Certification Procedures for ‘WIC EBT Capability.’ As discussed previously in the section on statewide cost sharing, FNS plans to establish procedures and guidance for the certification of retail vendor electronic cash registers and associated payment devices, to include the development of common test scripts and testing criteria. These standardized processes will assist State agencies when seeking assurances from a retail vendor that applies to become a WIC authorized vendor that their electronic cash register system meets the criteria for being ‘EBT capable’. These standardized processes will also help to assure that retail vendors are being consistently treated nationwide. Under the HHFKA at Section

17(h)(12)(E)(iv) and reflected in the proposed regulation at §246.12(aa)(4)(ii), once a State agency is operating WIC EBT statewide, the State agency must require that a retail vendor applicant demonstrate it is WIC ‘EBT capable’ prior to the State agency authorizing the vendor to participate in the Program, unless the State agency determines that the vendor is necessary for participant access.

To facilitate standardized processes and assist State agencies when seeking assurances that authorized vendors meet the criteria for being ‘EBT capable,’ FNS intends to provide guidance that would require retail vendors to demonstrate their capability to accept EBT benefits by: (1) using an abbreviated testing and certification process if the retail vendor is using a pre-certified system that is already in operation in other EBT State agencies; or (2) using an extensive certification process if the retail vendor is using a new system or has made substantial customization changes to a pre-certified system to meet specific business requirements. The retailer would bear all expenses and responsibility to ensure the system is certified by the State agency. The retailer would also be expected to work with the State agency to determine how they would be required to demonstrate their EBT solution is capable to accept EBT benefits.

FNS is interested in ensuring that integrated cash register systems and other system components complete WIC purchases accurately and result in proper payment of WIC funds. WIC participants should be protected from errors in payment software that incorrectly deduct the wrong quantities of benefits from their WIC EBT food balances. Likewise, State agencies have a fiduciary responsibility to ensure that payments made to WIC retail vendors are accurate and do not result in a liability for paying for benefits that were not authorized to be purchased by a

WIC card holder. Therefore, improving the current certification process should be a collaborative effort among WIC EBT stakeholders to ensure all affected entities are involved in defining a new process for retailer certification.

As we have approached other technical standards and operating rules related to various aspects of EBT implementation, we will ultimately include retailer certification standards and processes in the Operating Rules and TIG, as appropriate, after consultation and collaboration with WIC EBT stakeholders. Therefore, the discussion included in this preamble is for information purposes only. FNS welcomes comments in this area, particularly from State agencies, EBT processors, and retail vendors, as this will help to inform us on how we might approach retail certifications in the future.

Universal Interface Standard. FNS is currently working with State agencies and industry to develop a WIC Universal MIS-EBT interface document, which will define how data is exchanged between the two systems to support WIC EBT and to recommend where EBT-related data should be housed/maintained. All WIC State agencies use and maintain an MIS certification system that is used to enroll and certify WIC participants and perform other necessary functions related to WIC Program operations. Once a WIC participant is certified, the MIS calculates the food prescription that is written to a WIC EBT smart card or recorded in the online EBT account. The Universal Interface is designed to standardize the data and functions each system must support to operate a WIC EBT system. Some of the Universal Interface functions include setting up participant demographics, issuing a WIC electronic benefit prescription and exchanging data related to benefit updates and EBT redemption in files.

The Universal Interface will ultimately help reduce the effort and cost of EBT implementations by allowing the various MIS systems to “connect to” the various EBT systems in a common or standardized way. MIS systems are typically transferred from state to state, and if the EBT services are procured outside the state, the Universal Interface will help reduce the effort and cost to implement EBT in multiple State agencies and enables an ‘even playing field’ whenever a State agency contract for EBT service is re-procured. This type of standardization opens up competition and reduces the cost for conversion to different MIS and EBT providers.

Unlike the TIG, which applies to systems outside the State agency MIS, the Universal Interface standard governs the interaction between a state MIS and an EBT system. The Universal Interface specifies how a participant’s information and electronic benefits will be sent automatically from a clinic computer to the EBT host system. It also involves exchanges of information on authorized WIC vendors, to include data on retail vendors that is necessary to permit the EBT system to approve any purchases made at a retail vendor’s location. Another example is the exchange of data related to the specific cost containment peer group to which a newly authorized WIC retail vendor is assigned. The EBT host system tracks this information and edits prices submitted against the peer group price provided by the State agency.

Other Standards and Requirements. As mentioned previously, other standards may be necessary over time, and FNS must be able to establish these standards and/or incorporate these changes into the existing technical standards and guidelines. WIC State agencies must also accommodate and implement changes in the technical standards, operating rules or other

established guidelines. One example of this is the announcement by the VISA card network to introduce smart cards into the U.S. payment system, which may include contactless options that could be on a smart phone. WIC may need to put forth technical standards in order to allow similar contactless acceptance. Other examples of standards that may need to be addressed in the future include system security standards for Personal Identification Numbers (PINs), as well as other security aspects of an EBT system. Section 246.12(bb)(1)(ii) of the proposed regulations would require compliance to such standards established and approved by the Secretary that relate to WIC EBT.

Transitioning from a paper-based food instrument system to an EBT system offers an opportunity for enhanced customer service to WIC participants. As such, this proposed rule would require at §246.12(bb)(2) a State agency to replace participant benefits within five business days following notice by the household. The State agency would be required, at a minimum, to replace benefits one time in a three-month benefit issuance period. The replacement process would enable the remaining balances on an account to be temporarily put on hold until the benefits could be transferred to a new account. Currently there is no regulatory requirement for the replacement of WIC benefits reported lost or stolen, but rather is a State agency option. At the time of this writing, all WIC EBT State agencies have opted to replace EBT benefits reported lost or stolen, with the maximum wait time of five business days. Online EBT technology offers real-time participant benefit data, affording the opportunity for benefits to be replaced immediately. Since participant benefit data is located directly on the smart card in the offline environment, more time must be provided to allow for store purchase data to be settled in order to receive an accurate balance of remaining benefits. To date, the maximum

timeframe required for electronic benefit replacement by an EBT State agency is five business days; therefore, current EBT business practice is congruent with this proposal.

To leverage additional opportunities to enhance customer service for WIC participants, §246.12(bb)(3) of this proposed rule would also require a State agency to provide a toll-free, 24-hour hotline number for EBT cardholder assistance. Customer service can be provided via an automated system and/or live representatives and internet account access. This hotline number could provide a variety of services such as enabling participants to report a lost or stolen card through a single, toll-free phone call at any time, and request a replacement. At this time of writing, only a limited number of EBT State agencies provide this service to WIC participants, none of which are offline EBT State agencies. However, the Wyoming WIC Program had provided 24-hour participant support via contracted services in their offline system environment in the past, but determined the cost to provide such a service exceeded the benefits and ultimately terminated this service in 2008.

While FNS supports the potential for enhanced business practices and customer service that EBT may provide, we also recognize the potential affordability impact and management of resources with such proposed requirements for all EBT State agencies and, therefore, welcome and encourage reader comment.

7. National Universal Product Code (NUPC) Database.

Each WIC State agency is required to authorize eligible foods and develop a list of those food items that are available to WIC participants to purchase. In a WIC EBT environment,

authorized vendors are provided an electronic file containing the State agency's current list of authorized foods. This list of individual products is commonly referred to as the WIC State agency's APL. The APL includes the UPC or PLU code for each approved item. As products are scanned at the checkout lane, the UPC or PLU is matched to the state specific APL. Food items that match the APL, and which are presented in quantities less than or equal to the remaining benefit balance associated with the participant's WIC EBT card, are approved for purchase. Unmatched items, or items in excess of the available account balance, are not allowed for purchase with WIC benefits.

The NUPC database will serve as a national central repository for information about WIC authorized foods from all WIC State agencies operating an EBT system, and will provide State agencies with the ability to share information and eliminate duplication of effort when creating or maintaining a list of individual products which are eligible for purchase using WIC benefits.

Congress first noted the importance of creating the NUPC database with the passage of the Child Nutrition and WIC Reauthorization Act in 2004. This legislation directed the Secretary of Agriculture to: (1) establish a national Universal Product Code database for use by all State agencies; and (2) make available from appropriated funds such sums as are required for hosting, hardware and software configuration, and support of the database. It was on this basis that FNS initially developed a database and user interface which allows State agencies to store and retrieve specific information on foods found to be eligible for purchase using WIC benefits. The HHFKA reinforced Congress' original intent, stating that the Secretary shall establish a NUPC database to be used by all State agencies, and that it be made available by December 10, 2012.

While the provisional requirement to establish a NUPC database has been met and the current version of the NUPC database is available for use in both the test and production environments, FNS recognizes that the current version of the NUPC database is difficult to use, requires a significant time commitment to add products, and does not capture data in a consistent format. As a result, several WIC State agencies have developed UPC databases for individual State agency use. These individual UPC databases are not interconnected and do not serve as a central repository of information which can be freely shared between all WIC State agencies. FNS is, therefore, moving forward with several enhancements to the NUPC database which will: simplify the data input process; expand the database to include nutrition information and ingredients for each product; and provide for an independent third party to assume responsibility for populating the NUPC database while ensuring that the information housed in the database is accurate, complete, and consistent.

Several national and regional grocery chains have requested a single point of connection for WIC EBT file transfers to reduce the number of connections each retailer must establish or maintain while operating EBT systems. In response to that request, FNS intends to develop a centralized file transfer capability, or “clearinghouse,” to facilitate the transfer of APL’s between State agencies and their authorized vendors. In support of this objective, FNS proposes at §246.12(cc) to require WIC State agencies to submit an electronic copy of their current APL prior to the APL becoming effective or making it available to the State agency’s authorized vendors. The current APL will be used for subsequent distribution to authorized vendors via the “clearinghouse.” A national food category/subcategory table standard, which plays a critical role

in EBT food package issuance and redemption processes, has been established but is currently not required for use. While a national standard format for a category/subcategory table and APL file are both important and desirable as WIC EBT expands, FNS recognizes that mandating such a requirement may create a burden on State agencies. As such, FNS welcomes reader comment on the potential barriers, obstacles, and benefits State agencies would incur if conformity of a national standard APL was required by FNS. FNS also invites reader comment on how conformity could be effectively instituted.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be “Not Significant” under section 3(f) of Executive Order 12866; therefore, no OMB review is required.

Procedural Matters

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Pursuant to that review, Administrator of the Food and Nutrition Service, Audrey Rowe, has determined that this rule will not have a significant

economic impact on a substantial number of small entities. State and local agencies and WIC recipients will be most affected by the rule, and WIC authorized vendors and the food industry may be indirectly affected. The proposed rule would provide State and local agencies with increased flexibility in food delivery services for the Program. Vendors and the food industry would realize increased sales of some foods and decreases in other foods, with an overall neutral effect on sales nationally.

Public Law 104-4, Unfunded Mandates Reform Act of 1995 (UMRA)

Title II of the UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

WIC is listed in the Catalog of Federal Domestic Assistance under No. 10.557. For the reasons set forth in the final rule at 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the DATES paragraph of the preamble of the proposed rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

In WIC, the administrative procedures are as follows: (1) State and local agencies, farmers, farmers' markets, and roadside stands – State agency hearing procedures issued pursuant to 7

CFR 246.18; (2) Applicants and participants – State agency hearing procedures pursuant to 7 CFR 246.18; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19 – administrative appeal in accordance with 7 CFR 246.16, and (4) procurement by State or local agencies – administrative appeal to the extent required by 7 CFR 3016.36.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300-4, “Civil Rights Impact Analysis,” and 1512-1, “Regulatory Decision Making Requirements.” After a careful review of the rule’s intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits in the WIC Program. Federal WIC regulations specifically prohibit State agencies that administer the WIC Program, and their cooperators, from engaging in actions that discriminate against any individual in any of the protected classes (see 7 CFR 246.8 for the nondiscrimination policy in the WIC Program). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the WIC Program regulations set forth at §246.8.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government

and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to host periodic collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country. The policies contained in this rule would not have Tribal implications that preempt Tribal law.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains no new information collection requirements that are subject to OMB approval. Section 246.12(y) would require each State agency to have an active EBT project by October 1, 2015. The Advance Planning Document (APD) is used to initiate the EBT planning process. Under the existing collection (0584-0043), it is estimated that 15 APDs would be submitted each year. Currently, only 32 State agencies have not begun any EBT activity. As a result, the current estimate of 15 submissions per year is unchanged. The existing recordkeeping and reporting requirements, which were approved under OMB control number 0584-0043, will not change as a result of this rule.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002 to promote the use of the internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purpose. State Plan amendments regarding the implementation of the provisions contained in this rule, as is the case with the entire State Plan, may be transmitted electronically by the State agency to FNS. Also, State agencies may provide WIC Program information, as well as their financial reports, to FNS electronically.

List of Subjects in 7 CFR part 246

WIC, Administrative practice and procedure, Food assistance programs, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Reporting and recordkeeping requirements, Women.

Accordingly, for reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

**PART 246--SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN,
INFANTS AND CHILDREN (WIC)**

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In §246.2:

- a. Amend the definition of "Cash-value voucher" by adding a second sentence, "Cash-value voucher is also known as cash-value benefit (CVB) in an EBT environment";
- b. Add the definition of "Electronic Benefit Transfer (EBT)" in alphabetical order; and
- c. Revise the definition of "Participant Violation".

The addition and revision read as follows:

§246.2 Definitions.

* * * * *

Electronic Benefit Transfer (EBT) means a food delivery system that provides benefits using a card or other access device approved by the Secretary that permits electronic access to program benefits.

* * * * *

Participant violation means any intentional action of a participant, parent or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include, but are not limited to, intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; selling or offering to sell cash-value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or online; exchanging or attempting to exchange cash-value vouchers, food instruments, EBT cards, or supplemental foods for cash, credit, services, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer, or vendor staff; and dual participation.

* * * * *

3. In §246.4, amend paragraph (a)(1) by removing the period at the end of the paragraph and adding in its place a comma followed by the words “to include EBT and/or EBT implementation.”.

4. §246.12 is amended as follows:

a. Paragraph (a) introductory text is amended by removing the “s” from the word “benefits” and by adding a new sentence at the end of the paragraph.

b. Paragraph (b) by removing the word “three” and adding in its place “four”; and by removing the text “or direct distribution.” at the end of the first sentence and replacing it with “direct distribution, or EBT.”

c. Remove paragraph (g)(5).

d. Redesignate paragraphs (g)(6) through (g)(11) as (g)(5) through (g)(10), respectively.

e. Add new paragraphs (h)(3)(xxvi) through (h)(3)(xxx).

f. Add new paragraphs (w) through (cc).

The additions read as follows:

§246.12 Food delivery systems.

(a) * * * By October 1, 2020, each State agency shall implement an EBT system statewide, unless FNS grants an exemption under paragraph (w)(2) of this section.

* * * * *

(h) * * *

(3) * * *

(xxvi) EBT minimum lane coverage. Point of Sale (POS) terminals used to support the WIC Program shall be deployed in accordance with the minimum lane coverage provisions of

paragraph (z)(2) of this section. The State agency may remove excess terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in paragraphs (z)(2)(i) and (z)(2)(ii) of this section.

(xxvii) EBT third-party processing costs and fees. The vendor shall not charge to the State agency any third-party processing costs and fees incurred by the vendor from EBT multi-function equipment. Commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the EBT system of the State shall be borne by the vendor.

(xxviii) EBT interchange fees. The vendor shall not charge interchange fees related to WIC EBT to the State agency.

(xxix) EBT operational maintenance and operational costs. The State agency shall not pay ongoing maintenance, processing fees or operational costs for vendor systems and equipment used to support WIC EBT after the State agency has implemented WIC EBT statewide, unless the State agency determines that the vendor is needed for participant access.

(xxx) Compliance with EBT operating rules, standards and technical requirements. The vendor must comply with the Operating rules, standards and technical requirements established by the State agency.

* * * * *

(w) EBT food delivery systems (1) General. EBT systems are food delivery systems in which participants, parents or caretakers of infant and child participants, and proxies obtain authorized supplemental foods by using a card or other access device approved by the Secretary that permits electronic access to program benefits. All State agencies shall implement EBT statewide in accordance with paragraph (a) of this section.

(2) EBT exemptions. The Secretary may grant an exemption to the October 1, 2020 statewide implementation requirement. To be eligible for an exemption, a State agency shall demonstrate to the satisfaction of the Secretary one or more of the following:

- (i) There are unusual technological barriers to implementation;
- (ii) Operational costs are not affordable within the nutrition services and administration grant of the State agency; or
- (iii) It is in the best interest of the program to grant the exemption.

(3) Implementation date. A State agency requesting an exemption under paragraph (w)(2) of this section shall specify a date by which it anticipates statewide implementation. If a State agency is granted an exemption, such exemption would remain in effect until the State agency no longer meets the conditions on which the exemption was based, until the Secretary revokes the exemption, or for three years, whichever occurs first.

(x) EBT food delivery systems: ~~Electronic benefit requirements~~—(1) General. State agencies using EBT food delivery systems shall issue an electronic benefit that complies with the requirements of paragraph (x)(2) of this section.

(2) Electronic benefits. Each electronic benefit must contain the following information:

- (i) Authorized supplemental foods. The supplemental foods authorized by food category, subcategory, and benefit quantity, to include the CVB;
- (ii) First date of use. The first date of use on which the electronic benefit may be used to obtain authorized supplemental foods;
- (iii) Last date of use. The last date on which the electronic benefit may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days from the first date on which it may be used to obtain authorized supplemental foods except for the participant's first

month of issuance, when it may be the end of the month or cycle for which the electronic benefit is valid; and

(iv) Benefit issuance identifier. A unique and sequential number. This number enables the identification of each benefit change (addition, subtraction or update) made to the participant account.

(3) Vendor identification. The State agency shall ensure that each EBT purchase submitted for electronic payment is matched to an authorized vendor or farmer prior to authorizing payment. Each vendor operated by a single business entity must be identified separately.

(y) EBT food delivery systems: EBT systems management and reporting. (1) The State agency shall follow FNS Advance Planning Document (APD) requirements and submit Planning and Implementation APD's, and appropriate updates, for FNS approval for planning, development and implementation of initial and subsequent EBT systems.

(2) If a State agency plans to incorporate additional programs in the EBT system of the State, the State agency shall consult with State agency officials responsible for administering the programs prior to submitting the planning APD (PAPD) document, and include the outcome of those discussions in the PAPD submission to FNS for approval.

(3) Each State agency shall have an active EBT project by October 1, 2015. Active EBT project is defined as a formal process of planning, design, pilot testing, or statewide implementation of WIC EBT.

(4) Annually as part of the State plan, the State agency shall submit EBT project status reports. At a minimum, the annual status report shall contain:

(i) Until operating EBT statewide, an outline of the EBT implementation goals and objectives as part of the goals and objectives in 246.4(a)(1) to demonstrate the State agency's progress toward statewide EBT implementation; and

(ii) If operating EBT statewide, any information on future EBT system changes and procurement updates that would affect present operations; and

(iii) Such other information the Secretary may require.

(5) The State agency shall be responsible for the coordination and management of its EBT system.

(z) EBT food delivery systems: Vendor requirements—(1) General. State agencies using EBT food delivery systems shall comply with the vendor requirements in paragraphs (g) through (l) of this section. In addition, State agencies shall comply with the following requirements of this section specific to EBT.

(2) Minimum lane coverage. FNS encourages WIC EBT transactions to be integrated into the authorized vendor's electronic cash register system to promote efficiencies and improve WIC benefit delivery. If this is not possible, the State agency shall provide Point of Sale (POS) terminals solely used to support the WIC Program. All POS terminals, whether multi-functional or used solely to support the WIC Program, shall be deployed as follows:

(i) Superstores and supermarkets. One POS terminal for every \$11,000 in monthly WIC redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed in monthly WIC redemption threshold increments as follows: one terminal for \$0 to \$11,000; two terminals for \$11,001 to \$22,000; three terminals for \$22,001 to \$33,000; and four terminals for \$33,001 and above. A State agency may utilize an alternative installation formula with FNS approval. The monthly

redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption;

(ii) All other vendors. One POS terminal for every \$8,000 in monthly redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed in monthly WIC redemption thresholds as follows: one terminal for \$0 to \$8,000; two terminals for \$8,001 to \$16,000; three terminals for \$16,001 to \$24,000; and four terminals for \$24,001 and above. A State agency may utilize an alternative installation formula with FNS approval;

(iii) The State agency shall determine the number of appropriate devices for authorized farmers and farmers markets;

(iv) For newly authorized WIC vendors deemed necessary for participant access by the State agency, the vendor shall be provided one terminal unless the State agency determines that other factors in that location warrant additional terminals;

(v) Any authorized vendor who has been equipped with a terminal by the State agency may submit evidence that additional terminals are necessary after the initial POS terminals are installed;

(vi) The State agency may provide authorized vendors with additional terminals above the minimum number required by this paragraph in order to permit WIC participants to obtain a shopping list or benefit balance, as long as the number of terminals provided does not exceed the number of lanes in the vendor location; and

(vii) The State agency may remove excess terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in paragraph (z)(2)(i) through (ii) of this paragraph.

(3) Payment to vendors, farmers and home food delivery contractors. The State agency shall ensure that vendors, farmers and home food delivery contractors are paid promptly. Payment must be made in accordance with the established Operating Rules and technical requirements after the vendor, farmer, or home delivery contractor has submitted a valid electronic claim for payment.

(aa) EBT food delivery systems: Imposition of costs on vendors. (1) Cost prohibition. Except as otherwise provided in this section, a State agency shall not impose the costs of any equipment or system required for EBT on any authorized vendor in order to transact EBT if the vendor equipment or system is used solely for the WIC Program.

(2) Cost sharing. If WIC program equipment is not solely dedicated to transacting EBT for the WIC program, State agencies shall establish cost sharing criteria with their authorized WIC vendors for costs associated with such equipment in accordance with established criteria as set forth in 2 CFR Part 225.

(3) Fees. (i) Third-party processor costs and fees. A State agency shall not pay third-party processing costs and fees for vendors that elect to accept EBT using multi-function equipment. Commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the EBT system of the State shall be borne by the vendor.

(ii) Interchange fees. Interchange fees shall not apply to WIC EBT.

(4) Statewide operations. After completion of statewide implementation of an EBT system:

(i) A State agency shall not pay ongoing maintenance, processing fees or operational costs for vendor systems and equipment used to support EBT, unless the State agency determines that the vendor is needed for participant access;

(ii) Any vendor applicant in the State that applies for authorization to become an authorized vendor shall be required to demonstrate the capability to accept WIC benefits electronically prior to authorization in accordance with State agency requirements, unless the State agency determines that the vendor is necessary for participant access.

(bb) EBT food delivery systems: Technical standards and requirements. (1) Each State agency, contractor, and authorized vendor participating in the program shall follow and demonstrate compliance with:

- (i) Operating rules, standards and technical requirements as established by the Secretary; and
- (ii) Other industry standards identified by the Secretary.

(2) A State agency shall establish policy permitting the replacement of participant benefits within five business days following notice by the household to the State agency, at least one time in a consecutive three-month period.

(3) A State agency shall provide a toll free 24 hour hotline number for EBT cardholder assistance.

(cc) National universal product codes (UPC) database. The national UPC database is to be used by all State agencies operating a WIC EBT food delivery system. Each WIC State agency shall submit a copy of its current authorized product list (APL) for inclusion in the national UPC database prior to the APL becoming effective or making it available to its authorized vendors.

Audrey Rowe
Administrator,
Food and Nutrition Service

February 4, 2013_____
Date

[FR Doc. 2013-04216 Filed 02/27/2013 at 8:45 am; Publication Date: 02/28/2013]